LIMITATIONS—ASSUMPTION OF MORTGAGE—PAYMENT OF INTEREST—BEDDLE v. PUGH, 45 Atl. Rep. 626 (N. J.).—*Held*, the payment of interest by successive grantees, who assumed a mortgage, kept the statute from running in favor of mortgagor, notwithstanding sixteen years more than the period required had elapsed since any payment by him.

There are two rules, (1) that a tender to one entitled to receive by one liable to pay is sufficient, and successive grantees come within this rule. *In re Frisbie*, 43 Chan Div. 117; *Lewin* v. *Wilson*, 11 App. Cas 639; (2) that such grantees pay merely to keep alive the equity of redemption, and do not keep the statute from running. *Trustees* v. *Smith*, 52 Conn. 434. Where the mortgagor after sale becomes a surety the first seems the better rule, but where by sale of the property in States holding the lien theory he becomes a mere stranger, the second would probably prevail. *Lord* v. *Morris*, 18 Cal. 482.

MASTER AND SERVANT—WRONGFUL DEATH OF SERVANT—NEGLIGENCE—INDEPENDENT CONTRACTORS—GULF, C. & S. RY. CO. v. DELANEY, 55 S. W. 538 (Tex.).—A brakeman on a freight train was killed by the falling of derricks, used by an independent contractor, due to the breaking of a post to which guy ropes were fastened. The independent contractor was repairing defendant's road-bed. *Held*, the railroad company was liable.

An employe, when placed in a situation of danger, has a right to expect that the employer will not, without proper warning, subject him to perils unknown to the employe. *Haley* v. *Case*, 142 Mass. 316. Moreover, the employer owes his servants, while working on his tracks and his trains, the duty to furnish them a reasonably safe place to work; nothing short of the exercise of reasonable care can absolve him from this obligation. In this case the defendant company were clearly guilty of negligence, as the guy ropes had not been securely fastened, and the derricks ought not to have been used across its tracks, without some care being taken to discover and guard against the danger. As a general rule, the employer is not liable for injuries resulting from fault of an independent contractor, but in this case the negligence of the railway company was properly held to be the proximate cause of the injury.

MASTER AND SERVANT—INJURY TO SERVANT—SCOPE OF EMPLOYMENT—RAILROADS—NEGLIGENCE—TERRE HAUTE & I. R. CO. v. FOWLER, 56 N. E. 228 (Ind.).—A freight conductor learning from the road superintendent that two culverts were likely to be in a dangerous condition, detached his engine and started to examine them; the first was found to be all right and they proceeded to the second. In attempting to cross a trestle between the two it gave way and the conductor was killed. *Held*, that considering the emergency the conductor was not acting outside the scope of his employment.

This case is apparently decided against the long established rule of law that the master's liability to the servant extends only to the duty which the servant is employed to perform, and if he undertakes any employment outside that duty he is without remedy if injured. *Brown* v. *Byroad*, 47 Ind. 435. The question here involved, is whether the detaching of the engine by the decedent, and voluntarily proceeding to inspect the track, was such a departure from the duties of his employment as to constitute negligence per se. The peculiar emergency existing at the time is held to bring the conductor's act within the scope of his employment. *Wood on Master and Servant*, p. 181, says: "Every servant is bound to regard his master's interests, and if a sudden emergency arises in his business, he is justified in departing from the usual routine of his employment.

PARTNERSHIP—WHAT CONSTITUTES—HAWKINS v. CAMPBELL ET AL., 62 N. Y. Sup. 678.—Action against Bell and Campbell as partners, to recover an unpaid balance due the plaintiff. Campbell denied the allegation of partnership. *Held*, an agreement whereby the partners were to share the profits of

the business, and showing that each had contributed something to its capital and *possessed a definite interest in the business*, is sufficient to constitute them partners as to third persons, irrespective of their agreement not to be partners, and that the liability of one of them was to be limited to a certain amount.

The rule in New York as to what constitutes a partnership is evidently construed much more broadly than in most other States, as is shown in the case of *Roper* v. *Shaefer*, 35 Mo. Atl. 30, where it was held, on practically the same state of facts, that a partnership as to third parties did not exist. This latter is the more modern rule. 17 *Am. & Eng. Enc.* 878, and is being followed by most of the States.

PATENTS—INFRINGEMENT—SALE OF INFRINGING ARTICLE, 99 Fed. 568.—The defendant collected the various parts of a machine infringing a patent, and then sold them at a profit to the co-defendant, a corporation. He was subsequently hired by the corporation to set up the completed machine. *Held*, that he was liable as an infringer.

The decision disregards the case of *Nickel Co.* v. *Worthington* (*C. C.*), 13 Fed. 393, and follows the principle that a person cannot retreat behind a corporation and escape liability for infringements in which he actively participates. *Cash Register Co.* v. *Leland*, 94 Fed. 502; *Nat. Car Brake Co.* v. *Terre Haute Manufacturing Co.*, 19 Fed. 514. The gist of the decision is that everyone who has made a separate profit out of the sale of infringing goods is held liable. *Cramer* v. *Fry*, 68 Fed. 201; *Maltby* v. *Bobo*, 53 Fed., cases No. 8, 998.

PRACTICE—BURDEN OF PROOF—GOOD FAITH—GOWING ET AL. V. WARNER ET AL., 62 N. Y., Sup. 797.—Plaintiff sold goods to Gerrish & Co. upon the latter's false and fraudulent representations of its ability to pay. The goods were then sold to defendants, and this action brought to recover possession or their value. *Held*, burden of proof was on defendants to show good faith and not a part of plaintiffs *prima facie* case to prove the contrary.

The presumption of the *bona fide* character of an act does not maintain where the fact of good faith is a material fact in a civil defense. *Devoe* v. *Brant*, 53 N. Y. 462; *McKelvey on Evi*, § 54; *Easter et al.* v. *Allen 8*, *Allen 7*.

PRACTICE—CONCLUSIVENESS OF SHERIFF'S RETURN—TAYLOR V. WELSLAGER, 45 Atl. Rep. 476 (Md.).—Where defendant claimed that the sheriff, after serving her, returned and told her not to appear, that he made a mistake in serving her. *Held*, sheriff's return of service conclusive. *Bennethum* v. *Bowers*, 133 Pa. St. 332.

PRIZE—SALE OF ENEMY'S VESSELS TO NEUTRALS, 20 S. C. 489.—At the beginning of the Spanish-American war, de Massa, a Spanish subject, made a transfer of the steamer Benito Estenger to Beattie, a subject of Great Britain. Shortly after, as the vessel was on a voyage to Kingston, she was captured by a U. S. patrol and taken to Key West, where she was duly libelled. *Held*, that the vessel was a lawful prize of war.

Formerly transfers of vessels "flagrante bello" were held invalid. Even now in France this rule is stringently enforced. England and the United States have departed from the principle, however, and admit the validity of the sale. The circumstances attending the transfer in this case, however, viz.: the conflicting statements as to price, the remaining of the Spanish master and crew in charge of the vessel, the withholding of a certain interest by the former owner, etc., clearly showed the presence of fraudulent intent and the use of the transfer as a protection against Spanish capture. The *January*, 4 C. Rob. 31; the *Omnibus*, 6 C. Rob. 70. J. J. Shiras, White and Peckham dissented.